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October 29, 2007

Carla M. Tricarichi
Tricarichi & Carnes, L.L.C.
620 Rockefeller Building
614 Superior Avenue N.W.
Cleveland OH 44113-1306

Michael L. Cioffi
Blank Rome, LLP
201 East Fifth Street
1700 PNC Center
Cincinnati OH 45202

Re: Penn Central Arbitration Proceeding--
Motion to Recuse Neutral Arbitrator

Dear Ms. Tricarichi and Mr. Cioffi:

On October 26, 2007, Penn Central Transportation Company ("Penn Central") moved to recuse the undersigned neutral arbitrator "to avoid the appearance of partiality." In support of its motion, Penn Central relied on a 1985 ruling by Judge Lambros in earlier proceedings in these cases, on language from a 1968 Supreme Court decision, *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 150 (1968), and on several cases most of which involved the recusal of judges, not arbitrators, and none of which were decided by the Sixth Circuit. Alternatively, Penn Central asked the full arbitration panel to "recuse" (or more accurately remove) the neutral arbitrator.

Any decision to recuse the neutral arbitrator is to be made by the Neutral Arbitrator (subject, of course, to appropriate judicial review). I have reviewed the motion and the authority on which it is based and decline to recuse myself.

In making this decision, I note that the "appearance of partiality" standard on which the motion is based is not the recusal standard applicable to arbitrators. The quoted language from *Commonwealth Coatings*, see 393 U.S. at 150, appeared in a plurality opinion and was not adopted by a majority of the Court. Indeed, the concurring justices declined to apply to arbitrators the "appearance of partiality" standard applicable to judges. See 393 U.S. at 150 ("The Court does not decide today that arbitrators are to be held to the

standards of judicial decorum of Article III judges, or indeed of any judges.”)(White, J, concurring, joined by Marshall, J.). More importantly, the Sixth Circuit has rejected the application of an “appearance of partiality” standard. *See Nationwide Mutual Insurance Co. v. Home Insurance Co.*, 429 F.3d 640, 645 (6th Cir. 2006)(noting the Circuit’s “rejection, as dicta, of the appearance of bias standard espoused in the plurality opinion in *Commonwealth Coatings*”).

Even assuming the applicability of the “appearance of partiality” standard, neither the existence of a fundraising relationship with Dr. John F. Burke, Jr. (*prior* to my leaving the deanship on June 30, 2005) nor a casual (*i.e.*, non-intimate) social relationship with him creates an “appearance of partiality” that would require a judge or an arbitrator to recuse himself.

Finally, as noted below, a copy of this decision is being provided to the party-appointed members of the arbitration panel.

Yours truly,

/s/ Steven H. Steinglass

Steven H. Steinglass
Neutral Arbitrator

Cc: Dennis R. Lansdowne
Joseph Tomain